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October 13, 2006

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: May 31, 2006

Case Number: TSO-0391

This Decision concerns the eligibility of xxxxxxxxxxxx (hereinafter "the individual") for continued access authorization. The regulations governing the individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special unclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the individual's access authorization should be restored. For the reasons detailed below, it is my decision that the individual's access authorization should be restored.

I. BACKGROUND

On April 5, 2006, the DOE issued a notification letter to the individual. Attached to the notification letter was a statement entitled "Information creating a substantial doubt regarding eligibility for an Access Authorization." (hereinafter referred to as the "information statement"). The information statement indicates that the individual has a significant amount of overdue financial obligations and that those unsatisfied financial obligations raise a security concern under Criterion L. 10 C.F.R. §710.8(l). Specifically between 1998 and 2001 the individual incurred significant credit card debt which she has been unable to repay.

The notification letter informed the individual that she was entitled to a hearing before a hearing officer in order to respond to the information contained in the notification letter. The individual requested a hearing. I was appointed to serve as the hearing officer. In accordance with 10 C.F.R. § 710.25(e) and (g), I convened a hearing in this matter (the hearing).

II. HEARING TESTIMONY AND INDIVIDUAL'S EXHIBITS

In her opening statement at the hearing the individual indicated that she would present documents and testimony to mitigate the DOE security concern. She stated that she would demonstrate that she is currently living within her means and making the \$300 monthly payments required by a bankruptcy court to resolve her 1998-2001 credit card debts. Transcript of Hearing (Tr.) at 6. Below is a summary of the testimony at the hearing as well as a description of the documents submitted by the individual.

A. The Individual's Supervisor

The individual's supervisor testified that she has known the individual since 2002 when the individual started working at the site. Tr. at 8. She testified that "We talk and . . . we are cordial and understand each other . . . inner workings of each other to some degree." Tr. at 9. She indicated that the individual has been open with her and they have discussed the individual's financial problems as well as the details of the DOE investigation of her unpaid financial obligations. Tr. at 9.

The supervisor testified that the individual told her that her financial problems developed between 1998 and 2001. Prior to 2002 her mother had terminal cancer and the individual was paying most of her mother's non medical living expenses. She testified that the individual has filed for Chapter 13 bankruptcy and that she has participated in a financial seminar required by the court. Tr. at 11. She also indicated that their employer automatically debits money from the individual's salary and transfers the money to the bankruptcy court. Tr. at 15.

The individual's supervisor testified that she believes the individual currently lives within her means. She indicated that the individual does not buy extravagant things that would cause her to have financial problems in the future. Tr. at 16. She believes the individual to be trustworthy. Tr. at 17.

B. The Individual's Significant Other

The individual's significant other testified that he has known the individual for three years and they have been living together for two and a half years. Tr. at 19, 31 and 43. Initially, they lived in the individual's apartment. Since the spring of 2005 they have lived in a home that he purchased. Tr. at 22. The individual pays half of the mortgage, utility bills and the cost of food. Tr. at 34 and 41. He testified that the home mortgage, telephone account, electric account, Direct TV account and the water account are all current. Tr. at 24. He testified that the individual has never missed or been late with her payment for half of the household bills. Tr. at 34.

The individual's significant other testified that their current financial situation is good. Other than his home mortgage, his only outstanding debt is on his one credit card. That card has an outstanding balance of \$300. Tr. at 36. He has no children, and he owns free and clear several older cars and a tractor. Tr. at 24 and 37. He testified that the individual does not have a loan on the truck that she drives and she does not have any other current debts. Tr. at 41 and 45. He believes that the individual is "very frugal" and that she never "spends a lot of money." Tr. at 36.

C. The Individual

The individual testified that during the period between 1998 and 2002, her mother was undergoing chemotherapy for cancer. That cancer resulted in her death in May 2002. During her mother's illness the individual assumed responsibility for paying her mother's non medical living expenses. Tr. at 49. During this period, living expenses for the two of them exceeded the individual's salary and she therefore used her credit cards to finance the amount by which her expenses exceeded her income. As a result, she incurred

credit card debt, which, with accrued interest and fees, totaled \$72,000 at the time of her bankruptcy. Tr. at 50 and 90.

After her mother's death, the individual moved to the state in which the site is located and started working in her current position at the site. Tr. at 72. After the move to the new state, she was able to pay her current bills, but was unable to pay the credit card debt dating from the 1998 through 2001 period.

In 2003 she cancelled the lease on the home she had leased for her mother under a rent to own contract. Tr. at 53. During 2005 she recognized that she would not be able to pay her past-due financial obligations and discussed the possibility of filing for bankruptcy with two attorneys. Tr. at 55. She filed for chapter 13 bankruptcy on January 19, 2006. Tr. at 55. At the time of the bankruptcy she had \$72,000 in overdue financial obligations. Tr. at 90; Individual's Exhibit #7 at 16. Pursuant to the May 12, 2006 chapter 13 bankruptcy court order, she is obligated to pay her creditors, through the court, \$300 a month for five years. Individual's Exhibit #7 at 59. The \$300 monthly payment to the court is being automatically deducted from her current salary and sent to the court (hereinafter court garnishment). Tr. at 56 and 57. Her only current outstanding debts are to the local County Hospital (\$530) for diabetic type 2 diabetes health care and a small dental bill. Tr. at 70 and 71. She is current on her payment plan with the county hospital. Tr. at 57. She currently has no credit cards or accounts with stores. Tr. at 71.

D. The Individual's Documents

Prior to the hearing, the individual submitted four exhibits. Individual's Exhibit #1 is a letter from her bankruptcy attorney attaching a May 12, 2006 "Amended [court] order to employer to withhold and transmit deductions from debtor's pay."

Individual's Exhibit #2 contains various communications from the bankruptcy court. Individual's Exhibit #3 contains her checking account statements for 2006. Individual's Exhibit #4 contains the individual's detailed credit report dated July 18, 2006.

Individual's Exhibit #6¹ was submitted at the hearing. That exhibit contains copies of her significant other's mortgage loan statements and the utility bills for his home. Individual's Exhibit #7 contains various bankruptcy documents. A summary of the individual's creditor obligation is set forth at page 16 of Individual's Exhibit #7. That summary indicates the total obligations covered by the bankruptcy proceeding is \$72,015.

Page 1 of Exhibit #8 is a copy of the individual's pay statement showing that she receives a gross salary excluding overtime of \$4,224 per month. The statement also indicates during 2006 she has received additional pay in the form of overtime and differential pay. During the first eight month of 2006 that additional pay averaged several hundred dollars per month. Page 2 is a monthly budget prepared by the individual on August 30, 2006, which indicates monthly expenditures in 29 categories. The categories include the court garnishment, income taxes, social security taxes, rent, food, gasoline, various utilities, various categories of insurance, medical expenditures and several miscellaneous categories. The total

¹ There is no exhibit numbered Individual's Exhibit #5.

monthly expenses are \$4,324 per month. The remaining 20 pages contain insurance information and statements regarding her dental and hospital treatment. The information indicates she owed the county hospital \$530 on April 10, 2006. Page 7 of Exhibit #8. The exhibit also indicates she owed her dentist \$346.50 on August 8, 2006. Page 6 of Exhibit #8. Exhibit 8 also includes support for two of the line items on her budget. Page 3 indicates her cell phone bill is \$45.62 per month. Page 23 indicates her car insurance is \$75 per month.

III. REGULATORY STANDARD

In order to frame my analysis, I believe that it will be useful to discuss briefly the respective requirements imposed by 10 C.F.R. Part 710 upon the individual and the hearing officer.

A. The Individual's Burden of Proof

It is important to bear in mind that a DOE administrative review proceeding under this Part is not a criminal matter, where the government would have the burden of proving the defendant guilty beyond a reasonable doubt. Once a security concern has been raised, the standard in this proceeding places the burden of proof on the individual to bring forth persuasive evidence concerning his eligibility for access authorization. 10 C.F.R. §§ 710.21(b)(6), 710.27(b), (c), (d).

This burden is designed to protect national security interests. The hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

This is not an easy evidentiary burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring an access authorization. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of access authorizations indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of an access authorization). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. In addition to her own testimony, the individual in these cases is generally expected to bring forward witness testimony and/or other evidence which, taken together, is sufficient to persuade the hearing officer that restoring access authorization is clearly consistent with the national interest. *Personnel Security Hearing* (Case No. VSO-0002), 24 DOE ¶ 82,752 (1995).

B. Basis for the Hearing Officer's Decision

In a personnel security case under Part 710, it is my role as the hearing officer to issue a decision as to whether granting an access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. §710.27(a). Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after

consideration of all relevant information, favorable and unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I must examine the evidence in light of these requirements, and assess the credibility and demeanor of the witnesses who gave testimony at the hearing.

IV. ANALYSIS

The testimony at the hearing and the individual's credit report confirm that the individual incurred significant credit card debt between 1998 and 2001. During that period, the individual's mother was gravely ill and the individual provided significant financial support to her mother. As a result, the combined day to day living expenses of the individual and her mother exceeded the individual's salary. She financed the difference by borrowing on her credit cards. After her mother's death she was unable to repay the interest and principal on the credit card debt. At the time of her bankruptcy filing, January 2006, the credit card debt with interest and fees totaled \$72,000. These factors give rise to the Criterion L security concern of "a pattern of financial irresponsibility." 10 C.F.R. §710.8(l).

The individual has presented three factors that mitigate the DOE Criterion L security concern relating to her incurring debt as a result of regularly spending in excess of her income. The first mitigating factor is that the individual's debts were not incurred to obtain expensive items. The debt was incurred when the individual's family faced unusual health problems. Clearly her mother's illness will not recur. Further, since that period of having unusually high expenditures, she has demonstrated a pattern of spending responsibly. As a result she has not incurred any additional debts since 2002.

The second mitigating factor is that she has taken responsibility for the large debt that she incurred. On January 10, 2006 she filed a chapter 13 bankruptcy application. That application was granted in May 2006 and the individual agreed to pay the court \$300 per month for five years to satisfy the \$72,000 in credit card debt. Her testimony, the testimony of her significant other as well as the documentary evidence indicates that since May of 2006 the payments to the court have been deducted from her salary. The individual's behavior and the documents convince me that the individual has the financial ability and desire to continue the court payments and thereby resolve her past due financial obligations.

The third mitigating factor is her evidence of current responsible financial behavior. Her documentary evidence confirms this. The information includes a detailed budget as well as account and bank statement. Her budget indicates that her monthly expenses of \$4,300 per month are less than her gross salary of \$4,200 plus the overtime and differential pay she routinely receives. Furthermore, the detail presented in the budget and her ability to organize and present her monthly bills indicates she is organized and approaches her financial situation in a mature and thoughtful fashion. These account statements indicate that she is consistently paying all of her current bills. Her budget and account statement convince me that her current spending is in line with her income.

In summary, the individual has demonstrated that (i) her financial problems resulted from unusual circumstances that ended in 2002, (ii) she is complying with the payments required by the bankruptcy court and (iii) since 2002 she has not incurred any financial obligations that have not been satisfied. Furthermore, her ability to organize a budget and demonstrate that she is fulfilling her current financial obligations convinces me that she understands how to manage her financial obligations and she is committed to meeting her future financial obligations. Therefore, I find that she has mitigated the Criterion L security concern.

V. CONCLUSION

I have concluded that the individual has mitigated the DOE security concerns under Criterion L of 10 C.F.R. § 710.8. In view of the record before me, I am persuaded that restoring the individual's access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, I find that the individual's access authorization should be restored.

The review procedures applicable to proceedings under Part 710 were revised effective September 11, 2001. 66 Fed. Reg. 47061 (September 11, 2001). Under the revised procedures, the review is performed by an Appeal Panel. 10 C.F.R. § 710.28(b)-(e).

Thomas L. Wieker
Hearing Officer
Office of Hearings and Appeals

Date: October 13, 2006